IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.94 OF 2004

Shri Yeshwant Shripati yadav & Ors. ..Appellants.
Vs.
Shri Lalasaheb Ganpat Yadav & Ors. ..Respondents.

Mr.Umesh Mankapure, adv. for the Appellants.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 17, 2007.

P.C.:

1. Heard Mr.Mankapure the learned counsel for the Appellants, who are original defendants.

2. The respondent no.1 is the original plaintiff. The present appellants and the respondent nos.2 to 9 are the original defendants. Admittedly, all these parties are the descendants of a common ancestor Appa. Joint family held agricultural lands as co-parcenery property. Admittedly, in 1917 partition had taken place. According to the plaintiffs, the suit land, survey no.319/4 was left open for grazing of cattles of all the members of joint family and was not put to partition. By this suit, plaintiff sought partition of the suit property and claimed separate share. The defendants contended that this property had come to their share in the partition. As there is no dispute that this property was joint family property and as

defendants claimed that this property had come to their share, the learned trial Court as well as the First Appellate Court framed issues putting burden on the defendants to prove that this particular piece of land was also partitioned and had come to their share. Both the Courts below came to conclusion that no such evidence is led by the defendants. Both the Courts below gave concurrent findings that in spite of partition of 1917, this land , which is only one acre and fourteen gunthas, continued to be joint family property and decree for partition was passed declaring share of the plaintiff to be 1/4th. The learned counsel for the defendants, who are the appellants in second appeal vehemently contended that the burden was wrongly put on the defendants to prove this issue. The learned appellate Court was of opinion that the question of burden of proof was not material as evidence was led by parties. After going through the record and the evidence and findings of Courts below, I find no substantial questions of law involved in the matter.

3. Appeal stands dismissed.

[J.H.BHATIA, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.386 OF 2003
IN
SECOND APPEAL NO.94 OF 2004

Shri Yeshwant Shripati yadav & Ors. ..Applicants.
Vs.
Shri Lalasaheb Ganpat Yadav & Ors. ..Respondents.

Mr.Umesh Mankapure, adv. for the Applicants.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 17, 2007.

P.C.:

1. As the appeal itself has been dismissed, this application does not survive and stands disposed off accordingly.

(J.H.BHATIA, J.)